Not Designated For Publication

ARKANSAS COURT OF APPEALS

DIVISION I
No. CA08-1450

	Opinion Delivered April 29, 2009
JAMES CARPENTER APPELLANT	APPEAL FROM THE CRAIGHEAD COUNTY CIRCUIT COURT, [NO. JV07-122]
V.	HONORABLE CINDY THYER, JUDGE
ARKANSAS DEPARTMENT OF HUMAN SERVICES APPELLEE	AFFIRMED; MOTION TO WITHDRAW GRANTED

DAVID M. GLOVER, Judge

This is a no-merit appeal from the circuit court's order terminating James Carpenter's parental rights in A.C. (born December 27, 2002). Carpenter's attorney has filed a no-merit brief and a motion to withdraw, pursuant to *Linker-Flores v. Arkansas Department of Human Services*, 359 Ark. 131, 194 S.W.3d 739 (2004), and Arkansas Supreme Court Rule 6-9(i) (effective Sept. 25, 2008). The brief lists all adverse rulings from the termination hearing and explains why the rulings are not meritorious grounds for reversal. Our clerk's office mailed a copy of the brief and motion to withdraw to Carpenter at his last known address, informing him of his right to submit points for reversal. Carpenter has filed no pro se points. After a full examination of the record, we conclude that an appeal in this case would be wholly without merit. We therefore affirm the circuit court's termination of Carpenter's parental rights, and we grant his attorney's motion to withdraw.

The case originated in February 2006 when police officers found three-year-old A.C. and a young cousin unsupervised and playing in the road. The authorities charged Carpenter, A.C.'s custodial parent, with child endangerment. The Arkansas Department of Human Services (DHS) developed a case plan for Carpenter but could not maintain regular contact with him until April 2007. During this time, DHS received reports that Carpenter often left A.C. with almost anyone who would watch her while he was working. On April 19, 2007, a DHS worker visited Carpenter's home and found the home cluttered and containing four wild cats. A.C. was sleeping on an inappropriate mattress, wearing clothes and shoes that were too small for her, and her teeth were not brushed. Carpenter tested positive for opiates and marijuana. DHS exercised a seventy-two-hour hold on A.C. and obtained emergency custody of the child on April 25, 2007. The court adjudicated A.C. dependent-neglected on June 6, 2007.

Later in 2007, a new issue arose after DHS removed four-year-old A.C. from several foster homes because of her inappropriate sexual behavior. DHS referred A.C. to therapist Mandy Smith, who observed the child and spoke with her numerous time in 2007 and 2008. A.C. exhibited what Smith and others described as classic indicators of a sexually abused child. A.C. also told Smith, using child-like euphemisms, that Carpenter had touched her genital area with his penis and that Carpenter touched her when they took a shower. A.C. additionally said that Carpenter put his penis in her mouth, which she demonstrated by using a marker. Smith said that the child consistently reiterated the abuse allegations and never named anyone but Carpenter as the perpetrator. A.C. also made the same abuse allegations

to one of her foster mothers, to a CASA volunteer, and to a psychologist, Dr. Mark Cates.

On May 28, 2008, DHS filed a petition to terminate Carpenter's parental rights. At the termination hearing, Carpenter denied that he had sexually abused A.C. However, the court credited the testimony of Smith, Cates, and others in whom A.C. had confided, and the court entered an order terminating Carpenter's parental rights.

We conclude that an appeal from the termination decision would be wholly without merit. Carpenter's testimony that he did not sexually abuse A.C. was contradicted by other witnesses, whom the circuit court found more credible. Once the court weighed the evidence and determined that Carpenter had sexually abused A.C., it followed that termination was in the child's best interest. *See Hall v. Ark. Dep't of Human Servs.*, 101 Ark. App. 417, ___ S.W.3d ___ (2008). Sexual abuse is also an aggravated circumstance that constitutes grounds for termination. Ark. Code Ann. § 9-27-341(b)(3)(B)(ix)(*a*)(*3*)(*A*) and (*B*)(*i*) (Repl. 2008). Consequently, no meritorious argument could be made that the circuit court clearly erred in terminating Carpenter's parental rights.

The only other adverse ruling at the termination hearing involved Dr. Cates's written report of his psychological evaluation of A.C. When DHS offered the report as an exhibit, Carpenter objected that the report was hearsay. The court overruled Carpenter's objection and admitted the report. The admission of the report would not warrant reversal. Dr. Cates testified at the hearing and was subject to cross-examination. *See Brown v. State*, 96 Ark. App. 66, 238 S.W.3d 614 (2006) (holding that the Confrontation Clause does not bar admission of hearsay statements when the hearsay declarant testifies at trial); *Duvall v. State*, 41 Ark. App.

148, 852 S.W.2d 144 (1993) (holding that the danger of admitting hearsay statements is alleviated by the opportunity to cross-examine the declarant). Furthermore, Dr. Cates testified to the contents of the report without objection, so Carpenter could not show prejudice from the admission of the report itself. We will not reverse a circuit court's admission of evidence in the absence of a showing of prejudice. *See Aka v. Jefferson Hosp. Ass'n*, 344 Ark. 627, 42 S.W.3d 508 (2001).

Affirmed; motion to withdraw granted.

HENRY and BROWN, JJ., agree.